

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

Frederick Sellers

OCT 27 2015

Plaintiff

U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

Your full name

FEDERAL TORTS CLAIM ACT
COMPLAINT

v.

Civil Action No.: 2:15cv79
(To be assigned by the Clerk of Court)

Bailey
Trumble
Block

UNITED STATES OF AMERICA

I. JURISDICTION

The Court has jurisdiction over this action pursuant to: Title 28 U.S.C. Section 2671, et seq. (FTCA) and Title 28 U.S.C. Section 1346(b)(1).

II. PLAINTIFF

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Your full name: Frederick Sellers Inmate No.: #41780050
Address: FCI Gilmer, P.O. Box 6000, Glenville, WV. 26351
Housing Unit (B-4)

III. PLACE OF PRESENT CONFINEMENT

Name of

Prison/Institution: Federal Correctional Institution-Gilmer

A. Is this where the events concerning your complaint took place?
☒ Yes ☐ No

PARTIES:

(A) PLAINTIFF:

Frederick Sellers, Reg. No: 41780-050

FCI Gilmer

P.O. Box 6000

Glenville, WV 26351

(B) DEFENDANT:

United States of America

CLAIMS

I Frederick Sellers suffered a horrendous injury from an ill-advised hernia operation while housed at FCI Gilmer. Federal staff performed unprofessionally regarding my conditions.

1) A violation of my 8th Amendment rights when they subjected me to cruel and unusual punishment by negligently scheduling a ill-advised hernia operation for me when I never complained of one. Nor have I ever been assessed for one. Also for being deliberately indifferent to my needs of proper health care. And denying me follow-up care after surgery.

2) Denial of pain medication.

3) Due to the erroneous surgery I now suffer from anxiety and paranoia from constant thoughts of what really went on when the surgeon cut me open.

STATEMENT OF FACTS

(1) On 10-14-14, after noticing a rash on my back and chest, and feeling severe pain, I submitted a sick-call slip to the medical staff at FCI Gilmer (Document 1). I was seen by PA Ms. Lehman. She assessed the rash and diagnosed it as herpes zoster (A.K.A Shingles). We discussed my diabetes and high-blood pressure. She prescribed me meds for the shingles and sent me on my way.

(2) On 1-26-15 while housed at FCI Gilmer I was taken from my cell and placed in the SHU (Special Housing Unit). I thought I was taken there for some disciplinary reason. However, officer J. Clayton informed me that I have a scheduled hospital trip for an operation. Filled with incredulity I asked what kind of operation and he stated that I had a hernia operation. I told him that I don't have a hernia. He appraised me that the document he has says that I have multiple hernias. I was taken to a cell for the night and taken to the hospital the next day.

(3) On 1-27-15 I was transported from FCI Gilmer to St. Joseph's Hospital by Officers J. Stout and J. Clayton. I arrived there and signed a few papers. I was stripped out of my clothes and placed in a hospital gown. I was asked a series of questions by the medical staff at the hospital. Questions regarding my diabetes, my birth date, and had I eaten anything. My blood pressure was taken as well as my sugar levels. Subsequently, the surgeon came in and he asked me how's my pain? I replied what pain? I am not feeling any pain. The two officers that

brought me to the hospital then informed the surgeon that I had told them that they have the wrong guy. The surgeon asked me if I ever complained about a hernia, and I replied no. He asked if I ever complained of stomach pains, and I replied in the negative. I told him that I once had H.pylori (stomach bacteria). He gave me an odd look and waved his hand in disbelief. Skeptical he looked at his reports and began to ask me a series of questions to confirm my identity. He asked me to lay back and felt my stomach and asked if I felt any pain? I replied in the negative. He then directed me to get in a sit-up position and again felt my stomach, while asking me if I felt anything? I again replied in the negative. he then claimed that he felt something, and asked me if I wanted the operation? Filled with uncertainty I couldn't answer. He assured me that he was only going to make a 2-inch incision, gesturing with his fingers. Convinced, so I tell him to proceed because he is a doctor and I'm only a barber. Subsequently the operation was conducted.

(4) When I returned back to the institution I was taken to my cell. About an hour later PA Ruthie Carson came to my cell and asked me how was I feeling and I said I was alright. She then asked me to lift my shirt and I showed her the bandaged wound. She then stated that there wasn't much bleeding, and assured me that she would be back to change the wound the next day. Prior to her leaving I asked her for some pain medication,

and she agreed to get me some. I never received the pain medication, and had to endure the pain. By the time I received fresh bandages the wound was infected. See Document 2.

(5) On 2-9-15 I went to Health Services open house to retrieve a copy of my medical records to substantiate me being scheduled for a hernia operation. As I scrutinized the documents I noticed there were reports of an inmate being assessed on 10-14-14 for multiple hernias, and PA Lehmann Assessed and diagnosed the inmate. As I continued to read I noticed unfamiliar physical descriptions the assessed inmate had. Descriptions that don't fit me. I noticed the inmate was obese and had a protruding stomach, but what really stood out was the fact that this unidentified person had been stabbed. And judging by the notes of PA Lehmann his stab wounds were fresh because she asked him if he wanted a temporary ostomy. See (Document 3). I am not obese. I have never been stabbed nor have I complained about a hernia.

(6) Upon me continuing to read my medical records I noticed a note that PA Ruthie Carson documented. She noted that on 1-27-15, when she came to my cell, she informed me of the following: "No signs of new bleeding; instructions given for no lifting over 10 lbs; to wear abdominal binder for 3 months; may shower and return to work in 2 weeks. MDS done; will remove old dressing in 24 hours after post op." See Document 4. Unfortunately PA Ruthie Carson did none of the above and I wasn't laid in from work which is in sanitation. My work detail entails lifting heavy trash cans, cleaning, breaking boxes, etc., all of which further risked aggravating the wound. She also never gave me any new

gauze, and I had to cover the wound with gauze I received from another inmate which was taped on with mailing labels.

(7) On or about 2-8-15 I began the grievance process. Amidst that time my wound became badly infected. I sent PA Mrs. Wilson a request via e-mail. I expressed to her that my wound was leaking puss and blood and had a foul smell to it. PA Wilson instructed me to come over to medical. See Document 2. She assessed the wound, took a culture from it, and then prescribed me some antibiotics. She also asked PA Ruthie Carson if she could get me some fresh bandages. PA Carson retorted what does he need bandages for? After a 30 minute wait I decided to leave because I had the impression that PA Carson had an attitude. The following day I went over to health services to once again try to get fresh bandages. PA Wilson asked me why I didn't get them yesterday, and I informed her that PA Ruthie Carson had me waiting. Then PA Wilson again asked PA Carson to get me some bandages, and PA Carson immediately gets in my face screaming: "Oh it's important now? Oh it's important now? It wasn't that important yesterday! Why did you leave?" I replied that it was just as important the first day I came back and no one gave me fresh bandages or cleaned my wounds. She then became irate and took me into a room and pointed her finger in my face and said that I better never insult her like that again. She then went on a tirade about me throwing her under the bus and blaming her. She then had me lift up my shirt so she could see my wound. She began yelling that it is not infected and how long she's been in the

military and has seen much worse injuries. Also, how I'm complaining about such a small cut. She would not let me get a word in so I remained silent while she put clean bandages on my wound. She then taped some tape around a popsicle stick and grabbed several gauze and stuffed them in my shirt pocket and said don't come back here complaining. I left medical and went back to my cell to make a note of her behavior.

(8) On 2-18-15 I received an e-mail from PA Wilson informing me that the results came back from my culture swab and another infection was detected which meant that she'd have to prescribe another antibiotic. See Document 4.

(9) On 2-23-15 I was scheduled to see Dr. Anderson, in which he observed my infection. At that time my navel was closing due to the effectiveness of the meds. However, you could still see my flesh and the puss. He informed me that my navel may not fully close on its own so he scheduled me a trip to the hospital to get it surgically closed. See Document 5.

(10) On 5-11-15, approximately 2 months after seeing Dr. Anderson, I was called to health services and informed that I had to spend the night in the SHU (Special Housing Unit) because I had an operation scheduled for the following day. I declined because my navel had completely closed and showed no signs of infection. I was in fear of what would happen in relation to another operation that I felt would be unnecessary. See Document 6.

(11) The aforementioned, and attached documents, support my complaint that I was erroneously scheduled for a heria operation.

A hernia that I had never complained about, nor had.

Attachment A

If you answered "NO," where did the events occur?

IV. PREVIOUS LAWSUITS

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? ☒ Yes ☐ No

B. If your answer is "YES", describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: "IV PREVIOUS LAWSUITS"

1. Parties to this previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court: _____
(If federal court, name the district; if state court, name the county)

3. Case Number: _____

4. Basic Claim Made/Issues Raised: Gross Negligence
and malpractice.

5. Name of Judge(s) to whom case was assigned: Robert W. Trumble

6. Disposition: Dismissed per m.v. Request
(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: 9-14-15

Attachment A

8. Approximate date of disposition. Attach copies: 10-14-15
- C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?
☒ Yes ☐ No
- D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought. I went through the entire administration process,
and was denied on each level.
- E. Did you exhaust ALL available administrative remedies?
☒ Yes ☐ No
- F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted. From the initial Informal
Resolution to the tort claim.
- G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS".

1. Parties to previous lawsuit:

Plaintiff(s): Frederick Sellers

Defendant(s): United States

Attachment A

2. Name and location of court and case number: U.S. District
Court for Northern District of West Virginia
Docket No: 3:15-cv-108
3. Grounds for dismissal: ☐ frivolous ☐ malicious
☐ failure to state a claim upon which relief may be granted
4. Approximate date of filing lawsuit: 9-14-15
5. Approximate date of disposition: _____

V. ADMINISTRATIVE REMEDIES PURSUANT TO THE FTCA

- A. Did you file an FTCA Claim Form (SF-95), or any other type of written notice of your claim, with the appropriate BOP Regional Office?
☒ Yes ☐ No
- B. If your answer is "YES," answer the questions below:
 1. Identify the type of written claim you filed: FTCA Claim (SF.95)
 2. Date your claim was filed: 5-18-2015
 3. Amount of monetary damages you requested in your claim:
13,000,000.00
 4. If you received a written Acknowledgment of receipt of your claim from the BOP, state the:
 - I. Date of the written acknowledgment: 6-1-2015
 - ii. Claim Number assigned to your claim: TRT-MXR-2015-04224
- C. If your claim involves individuals who are employed by government agencies **other than the BOP**, did you file an FTCA Claim Form (SF-95), or any other type of written notice of your claim with the appropriate government agencies? ☐ Yes ☒ No

Attachment A

D. If your answer is "YES," answer the questions below:

1. Identify the specific government agency or agencies, including the addresses, where you filed notice of your claim:

2. Identify the type of written claim(s) you filed: _____

3. Date your claim(s) were filed: _____

4. Amount of monetary damages you requested in your claim(s):

5. If you received a written Acknowledgment of receipt of your claim(s), state the:

I. Date of the written Acknowledgment: _____

ii. Claim Number assigned to your claim: _____

E. If the BOP (or other government agency that received notice of your claim) either denied your claim or offered you a settlement that you did not accept, please state whether you requested reconsideration of your claim.

☐ Yes ☐ No

1. If you answered "YES," state the:

I. Date you requested reconsideration: _____

ii. Date the agency acknowledged receipt of your request for reconsideration: _____

REQUEST FOR RELIEF

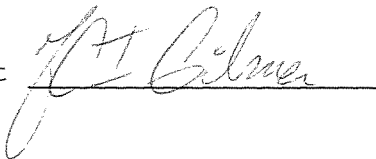
I request the following relief:

- 1) Declatory judgment that the defendants violated my constitutional rights.
- 2) Trial by Jury on the facts, legal claims, and amount of damages.
- 3) Compensatory damages for 3,000,000.00 from the United States of America.
- 4) Punitive Damages for 3,000,000.00 from the United States of America.
- 5) Immediate release from federal custody, and termination of any probation.
- 6) Judgment for the cost and fees of this legal action.
- 7) Injuntive relief against retaliation because of this complaint.

DECLARATION UNDER PENALTY OF PERJURY

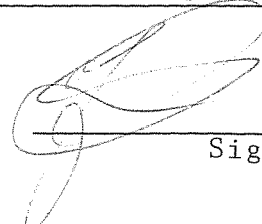
The undersigned declares under penalty of perjury that he/she is the plaintiff in the above-captioned action, and that he/she has read the above complaint and that the foregoing information contained in this complaint is true and accurate to the best of my knowledge. Pursuant to 28 U.S.C. 1746, and 18 U.S.C. 1621.

Executed at



On

10-25-15



Signature